

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	CC Docket No. 94-129
Telecommunications Act of 1996)	
)	
McLeodUSA Telecommunications Services,)	
Inc.)	
Petition for Waiver)	

ORDER

Adopted: September 20, 2000

Released: September 21, 2000

By the Associate Chief, Accounting Policy Division, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules applicable to carriers changing a consumer's preferred carrier.² In this Order, we grant McLeodUSA Telecommunications Services, Inc. (McLeodUSA) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.³ We grant this

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*); *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); *First Order on Reconsideration*, FCC 00-135 (released May 3, 2000), 65 Fed. Reg. 47678 (August 3, 2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, FCC 00-255 (released August 15, 2000); *reconsideration pending*; *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*). We refer to these orders collectively as the *Carrier Change Orders*.

² 47 C.F.R. §§ 64.1100 - 64.1190.

³ On July 21, 2000, McLeodUSA filed an Emergency Petition for Waiver of the Commission's Rules relating to McLeodUSA's transfer of customers presubscribed to certain affiliated carriers (Waiver Petition). The (continued....)

limited waiver to the extent necessary to enable McLeodUSA to become the preferred carrier of the consumers currently presubscribed to the McLeodUSA Affiliates, without first obtaining the consumers' authorization and verification.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."⁴ The goal of section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁵ In the *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.⁶

3. McLeodUSA seeks a waiver of our verification rules to allow McLeodUSA to be designated the preferred long distance carrier for the customers of the McLeodUSA Affiliates without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant McLeodUSA a waiver, subject to the conditions represented in its filings.

II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.⁷ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.⁸

affected McLeodUSA affiliates are Access Communications, Inc., BRE Communications, LLC, Consolidated Communications Operator Services Inc., Dakota Telecom, Inc., McLeodUSA Communications of Wisconsin, Inc., OneStop Telecommunications, Inc., Ovation Communications International, Inc., Ovation Communications of Illinois, Inc., Ovation Communications of Minnesota, Inc., and S.J. Investments, Inc. (McLeodUSA Affiliates). On September 15, 2000, McLeodUSA filed a Supplement to its Waiver Petition (Supplement), which included drafts of its pre-transfer and post-transfer customer notification letters.

⁴ 47 U.S.C. § 258.

⁵ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁶ Pursuant to these procedures, a carrier must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

⁷ 47 C.F.R. § 1.3.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹¹

5. We find that McLeodUSA has demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable McLeodUSA to transfer to its own customer base the customers of the affected McLeodUSA Affiliates. McLeodUSA is a provider of local exchange, intrastate and interstate interexchange, and international telecommunications services in the Midwestern and Rocky Mountain states, and the McLeodUSA Affiliates provide similar services. McLeodUSA and the McLeodUSA Affiliates are owned by the same parent corporation, McLeodUSA Incorporated, a diversified telecommunications company. To promote efficiency, McLeodUSA intends to consolidate its operations with those of the McLeodUSA Affiliates by transferring the customer base of each McLeodUSA affiliate to McLeodUSA.¹² Upon discontinuance of service by the McLeodUSA Affiliates, McLeodUSA will provide local exchange, intrastate and interstate interexchange, and international telecommunications services on a presubscription basis to the former customers of the McLeodUSA Affiliates.

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former McLeodUSA Affiliates customers might temporarily be interrupted when the McLeodUSA Affiliates cease providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change authorization; those customers might also pay potentially higher casual calling rates after the discontinuance of presubscribed service. We conclude that a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of service to the transferred customers.

7. We find that McLeodUSA has demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing service or paying significantly higher rates, and because McLeodUSA has agreed to notify the affected customers as described below. McLeodUSA states that it will undertake a two-step process to notify the affected customers of the transfer. In a first letter, McLeodUSA will inform customers of the proposed transfer and assure them that no charges or rate increases will be imposed as a result of the transfer.¹³ McLeodUSA states that it will also

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *WAIT Radio*, 418 F.2d at 1157.

¹¹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹² Waiver Petition at 2-3.

¹³ McLeodUSA filed sample notification letters. *See* Supplement (Notification Letters); *see also* Waiver Petition at 4.

advise the affected customers that they may choose a different preferred carrier, and that, if they decide to do so within 30 days of the transfer date, McLeodUSA will reimburse them for carrier change charges, if any are imposed by their local exchange carriers.¹⁴ In addition, customers will be given a toll-free number to call with any questions they may have about the transition. According to McLeodUSA, once the proposed transfer has been consummated, McLeodUSA will notify these customers of that event and reiterate the foregoing information, assurances, and advice.¹⁵ McLeodUSA has agreed that, if the Commission waives its rules to permit McLeodUSA to provide service to the McLeodUSA Affiliates' former customers, McLeodUSA will work with the complainants and the Commission to investigate and resolve any outstanding customer complaints regarding services provided by the McLeodUSA Affiliates.¹⁶ We conclude that these conditions will adequately protect the rights of the transferred customers of the McLeodUSA Affiliates.

8. For the foregoing reasons, we grant McLeodUSA a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon McLeodUSA's provision of customer notification and handling of customer complaints, as described above and further detailed in the Waiver Petition and Supplement.

III. ORDERING CLAUSES

9. Accordingly, pursuant to authority contained in Sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by McLeodUSA Telecommunications Services, Inc. on July 21, 2000, and supplemented on September 15, 2000, IS GRANTED to the extent indicated herein.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

K. Michele Walters
Associate Chief
Accounting Policy Division
Common Carrier Bureau

¹⁴ Supplement at 2; Notification Letters; Waiver Petition at 4.

¹⁵ Supplement at 2; Notification Letters; Waiver Petition at 4.

¹⁶ Waiver Petition at 5.